

# Authority of *Qawl al-Ṣaḥābī* in *Fiqh* and its Application in Modern Islamic Finance

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## Abstract

The companions of the Prophet Muhammad (pbuh) who devoted their lives in understanding and propagation of Islām possess the most highly regarded and noblest status amongst all the Muslims, as envisaged in the Qur’ān and the Sunnah. This paper deals with the issue of *fiqhī* status of *qawl al-ṣaḥābī* (saying, opinion, verdict or *fatwā* of the companions) in the discipline of Islāmic jurisprudence. The paper offers qualitative analysis of various views on the subject matter. The paper maintains that the majority of Muslim jurists are of the view that the legal opinions of the companions are considered as an authoritative source of Islāmic law under specified conditions, and as such the Muslim jurists, from the past and present alike, heavily rely upon these opinions to support their own Islāmic legal judgments (*fatāwā*). Besides, the opinions of the companions also play a very vital role as supportive underlying evidences in *fiqh al-mu’āmalāt*. Given the same paramount significance of these opinions, they are also treated and used, along the line with other secondary sources of Sharī’ah, in Islāmic finance as proofs for contemporary *fatāwā*. The paper argues that this secondary source of Sharī’ah can be creatively utilised for further development and innovations in Islāmic finance along with other sources.

**Keywords:** *Qawl al-ṣaḥābī*, *Fatwā* of the Companions, *Uuūl al-Fiqh*, *Fiqh al-Mu’āmalāt*, Islāmic Finance.

**IEI Classification:** A5, C0, C5, H15

## 1. Introduction

It is an undeniable fact that the theory and practice of modern Islāmic finance heavily relies on Islāmic legal rulings (*fatāwā* plural of *fatwā*) issued by Islāmic scholars. Whether a *fatwā* is related to the permissibility of products and services offered by conventional banks based on *ribawi* transactions issued by Sheikh Al-Tantawi (El Gamal, 2003), or Sheikh

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Usmani's declaration of 85% of Sukuk transactions as impermissible, the overwhelming impact of a *fatwá* can be easily observed in the Islāmic finance industry. It may not be an exaggeration to say that the *fatāwá* along with other factors may play pioneering role to shape the future of Islāmic finance. Given the overriding importance of *fatāwá* in particular, one may construe how crucial these *fatāwá* could be if they are issued by the companions (*ṣaḥābah* plural of *ṣaḥābī*) of the Prophet Muhammad (pbuh). It should certainly merit careful consideration no less than the attention given to any *fatāwá* issued by the contemporary Muslim jurists.

Despite its incontrovertible substance, it seems that no adequate attention to this area of research has been focused. Many classical Sharī'ah scholars wrote comprehensively on *uṣūl al-fiqh* in Arabic language. Their work, comprising of many volumes, discusses the subject matter of *qawl al-ṣaḥābī* at different lengths in general. Nevertheless, only a few quality researches have been found on *uṣūl al-fiqh* in English language. Even these researches are confined to the introductory work on the subject matter. So far the authors' knowledge goes; extensive academic literature in English is hardly available particularly on *qawl al-ṣaḥābī*. In order to fill up this gap, this study seeks to make a thorough discussion on the issue. To this end, it attempts to clarify the legal status and importance of juridical opinions of *ṣaḥābah* in *uṣūl al-fiqh* and *fiqh*. Besides, it also sheds some light on the implications of such Islāmic legal rulings in *fiqh al-mu'āmalāt*, with special reference to modern Islāmic finance practice.

The structure of the paper is as follows. Followed by the introduction, it examines the definitions of the term "*ṣaḥābī*" and describes the criterion of the eligibility to be recognised as a *ṣaḥābī*. Then it discusses the status of the companions in the light of the Qur'ān and Sunnah. Having delineated the above, the study pinpoints the meaning of *qawl al-ṣaḥābī* in the study of *uṣūl al-fiqh*. It also deliberates on the legal status of *qawl al-ṣaḥābī* in details through a critical analysis of various views held by the scholars of Sharī'ah. Then it moves on to discuss the importance of *qawl al-ṣaḥābī* from Islāmic finance perspectives. The study concludes with a summary and some concluding remarks.

## 2. Definition of *Ṣaḥābī*

The word *ṣaḥābī* (صحابي) [the plural of which is *ṣaḥābah* صحابة] is derived from the root word *ṣuḥbah* (صحبة) (Mustafa et al., n.d.), which literally means "to associate with", "to be a companion of" and "be friend with". All the linguists of Arabic language are unanimous on that the word *ṣuḥbah* (صحبة) does not constitute any period or duration of relationship in itself (Al-Sayuti, n.d.). Hence, the literal meaning of *ṣaḥābī* is companion,

whether the relationship continues for a long time or a short time; i.e. a year, a month, a day or even a moment.

Some jurists hold the opinion that a *ṣaḥābī* is the person who has narrated the *hadith* from the Prophet (pbuh) and remained in his companionship continuously (Al-Amidi, 1983; Al-Sayuti, n.d.). This definition is adopted by some jurists (*uṣūliyyin*), as they are more interested in assuring that a companion had completely understood the tradition of the Prophet (pbuh) within the context. However, this can be regarded as an undue restriction which is not needed in this case, as the companionship (*ṣuḥbah*) does not necessarily conclude level of *ijtihād* for all the companions. Not all the companions were *muftiyyan* and *mujtahidun*. Rather, *ṣuḥbah* is viewed more as a merit status, up-righteousness and *‘adalah* (being just). The generalisation of merit and up-righteousness for all the companions is also proved by many verses of the Qur’ān without such restriction. For instance, the Qur’ān praises *ṣaḥābah* as:

*"Rather, the Prophet and those who believe with him fought with their property and their lives for these are all good things, they are the successful ones and Allah has prepared for them gardens beneath which rivers flow to dwell therein forever, and that is the great success" (Qur’ān, Sūrah Al-Tawbah 9: 88-89).*

Among the various reported *ahadith* dignifying the companions, one states that when Prophet Muhammad (pbuh) was asked about the group who would get salvation from the hell-fire, he answered, *"The group in which I and my companions are (would get salvation)"* (Al-Tirmidhi, n.d.). Therefore, a consensus has been established that all the companions are upright, trustworthy and reliable beyond any doubt. Majority of the scholars, therefore, have adopted the definition of *ṣaḥābī* as:

*The person who met Prophet Muhammad (pbuh) as a believer and died as a Muslim, even this (companionship) is intervened by apostasy* (Al-Tahan, 1984; Al-Asqalani, n.d.).

There is no restriction of the number and duration of the meeting in this definition.

## 2.1 Evidence for the Establishment of *Ṣaḥābah*

The eligibility criteria of a *ṣaḥābī* may be established in many ways. The first evidence to be considered is continuous testimony (*al-tawatur*) which has proved, for example, in case of the rightly guided Caliphs (*al-khulafa’ al-rashidun*), etc. Second criteria is attaining *al-shohrah* or reputation (i.e., below the level of *al-tawatur*) as regarded in the case of Dhamam B. Thalabah, Ukkasha B. Mahsun, etc. The next criterion of being a *ṣaḥābī* is

the confirmation of another *ṣaḥābī* about a person that he/she is also a *ṣaḥābī*. Even a self-affirmation of a person can be considered as evidence of *ṣaḥābah*; but this self-endorsement is seen controversial among the jurists (Kamali, 2007). This could only be accepted if the person himself/herself is just (*thiqqah* and *ʿadl*) and secondly, the claim is logically possible. Another evidence of *ṣuḥbah* is the report of a *tabiʿi* who is deemed as an authoritative scholar and expert in Sharīʿah studies (Al-Tahan, 1984; Al-ʿUsqalani, n.d.).

## 2.2 The Eminence of *Ṣaḥābah* in Sharīʿah

The *ṣaḥābah* not only received, understood, believed, practiced and preserved the commandments of Allah and His messenger with pure hearts, but also transmitted the commandments to the next generations in their original form. Therefore, the status of *ṣaḥābah* is undisputedly the highest among all Muslims. This claim is also supported by the Qurʾān, Sunnah, and opinions of Sharīʿah scholars. The Qurʾān states:

*Muhammad is the messenger of Allah, and those who are with him are hard on the disbelievers, compassionate among themselves; you will see them bowing down in rukuʿ, prostrating themselves in sajdah, seeking grace from Allah, and (His) good pleasure; their distinguishing feature is on their faces from the effect of sajdah (prostration). This is their description in Torah; and their description in Injil is: like a sown crop that brings forth its shoot, then makes it strong, then it grows thick and stands straight on its stem, looking good to the farmers, so that He may enrage the disbelievers through them. Allah has promised forgiveness and a huge reward to those of them who believe and do good deeds (Qurʾān, Sūrah Al-Fath 48: 29).*

The Qurʾān praises *ṣaḥābah* in such a manner that no other generation from Muslims have been paid tribute in the same way. Many *ahadith* also clearly dignify the status of *ṣaḥābah* from different perspectives. Once the Prophet Muhammad (pbuh) is reported to have said:

*The Almighty Allah chose me and chose my companions for me and made them ministers, supporters and in-laws for me. Thus, whoever insulted them the curse of Allah and the angels and all the people will be upon him; Allah will not accept any deed and favour from him on the day of Judgement (Al-Hakim, 1990).*

By virtue of the status of a *ṣaḥābī*, *qawl al-ṣaḥābī* holds unparalleled significance in understanding the Sharīʿah. This is evidently logical and carries great merit for a Muslim, because *ṣaḥābah* were the ones who directly learned the Sharīʿah from the Messenger of Allah (pbuh), knew

the dialect, directly observed the custom, culture, context and socio-economic aspects of the life of the Messenger with minute details. On this basis, the *fatāwá* of *ṣaḥābah* are considered as a source of judicial rulings in *uṣūl al-fiqh*, which is also crucial for understanding the *fiqh* in general.

### 2.3 Meaning of *Qawl al-ṣaḥābī* in *Uṣūl al-fiqh*

Prior to discussing the juridical status of the *fatwá* of a *ṣaḥābī*, it is crucial to understand what the term “*qawl al-ṣaḥābī*” exactly refers to in the science of *uṣūl al-fiqh*. According to the jurists (*uṣūliyyun*), the term implies the opinions of companions based only on their own *ijtihād* in any Islāmic juridical matter. If a *ṣaḥābī*'s opinion is also found with regard to explicit text of the Qur'ān or the Sunnah, then it will be deemed as the explanation of the Qur'ān or the Sunnah itself. In addition, if the opinion is backed by the consensus (*ijmā'*), it will become a definite separate source of religious rulings. It should not also contradict any clear ruling of the Qur'ān or the Sunnah; otherwise, the preference would be given to the sources of rulings with higher rank.

The term *ijtihād* used in the above definition of *qawl al-ṣaḥābī* denotes that it is related to a situation where no direct ruling can be found in the two primary sources, i.e., the Qur'ān or the Sunnah, and also there is no consensus of scholars available on the issue (Khallaf, 1959). If an opinion of a *ṣaḥābī* is contradicted by a different opinion of another *ṣaḥābī*, the scholars hold the view that the preference should be given to the judicial decision which can be supported by stronger underlying evidence (Ibn Al-Qayyim, 1968). Imām Abu Hanifah opines: *I may follow the ruling which appeals to me (on the basis of the strength of proofs) and abandon which does not* (Al-Saimari, 1985). Abu Zahrah (1958) quotes Imām Shafi'i saying: *We should follow the opinion (of the companions) which consists of reason (dalīlah)*.

### 3. The Status of *Fatāwá* of the Companions

There are two major issues in *qawl al-ṣaḥābī* which are generally argued: a) Whether or not the *madhhab* of *ṣaḥābī* be considered as one of the sources of *fiqh* rulings; b) if the answer is affirmative then the question may arise regarding the status of that ruling, whether or not it is a binding proof.

According to Al-Shawkani (1992), it is generally accepted by the jurists that the *fatwá* of a *ṣaḥābī* in any *ijtihādi* issue is not a binding proof for another *ṣaḥābī*. Unanimity (*ijmā'*) of this view was reported by Qadi Abu Bakar, Al-Amidi and Ibn Hajib. However, there are many views on whether or not the *fatwá* of a *ṣaḥābī* can be implemented upon the

following generations (*tabi'un and taba' tabi'un*) and their successors (*mujtahidn*) as binding evidence.

The first view on this issue is that the *fatwá* of a *ṣaḥābī* is not a proof at all, and as such it does not bind any *mujtahid* whatsoever. Al-Shawkani (1992) supports this view and even reports that this verdict is applauded by majority of the jurists. Kamali (2007) also seconds this decision and adds that Ashairah, Mutazilah, Imam Ahmad (according to one of his statements), Al-Karkhi, Al-Ghazali and Al-Amidi all agree with this point of view as well. Imam Shafī also holds this view according to one of his statements (Al-Shawkani, 1992; Kamali, 2007; Bukhari, 1997; Zuhayr, n.d.). However, Al-Shawkani (1992) and Kamali's (2007) claim remain unchecked and should not be accepted without suspicion. The proponents of this view establish their proposition on following verse of the Qur'ān: *Consider, O you who have vision (Qur'ān, Sūrah Al-Hashr 59:2).*

It is inferred that Allah orders *mujtahidun* to ponder and rely on their own *ijtihād* without any exception, obliging them to exercise *ijtihād*. So, following a *fatwá* of a *ṣaḥābī* as a binding proof is equivalent to the abandonment of *ijtihād*. Moreover, there is a consensus of the scholars that the saying of a *ṣaḥābī* is not binding on another *ṣaḥābī*, and as such it should not be binding on *tabi'un* and the following generations as well (Kamali, 2007). In addition, Al-Shawkani (1992) stresses that Allah has revealed only one Book (the Qur'ān) and sent down only one Prophet, Muhammad (pbuh), for this *ummah* (Muslim nation). The whole *ummah* including *ṣaḥābah* are commanded by the Lawgiver to follow His Book and His Messenger; so those who believe *qawl al-ṣaḥābī* as a binding proof, are in fact trying to create another source of Sharī'ah. He warned that one should be very careful in making such risky decisions. Others also added that *ṣaḥābah* were not immune from errors, so their opinions should not be qualified as a binding proof.

The foregoing arguments seem to have failed to carry significant merits due to the fact that *ijtihād* is obligatory on the scholars who have equipped themselves with the abilities of *ijtihād* and hence became qualified as *mujtahidun*; however, following *fatwá* of a *ṣaḥābī* cannot be equated to giving up *ijtihād* in absolute terms. The scholars are free to follow the *fatāwá* of *ṣaḥābah* by way of *ijtihād* or in the process of *ijtihād*. It means that *mujtahidun* should exert their own *ijtihād* but they are required to exercise it in the same way as the companions of the Prophet (pbuh) did. The Prophet is reported to have said: *My companions are like stars; whoever you follow will lead you to the right path* (Abu Zahrah, 1958).



From the above *hadith* it is evident that *ijtihād* can be applied within the framework given by the *ṣaḥābah* to extend the rulings to the issues to come. Moreover, the *mujtahidun* can apply their *ijtihād* in the later/upcoming issues where the *qawl al-ṣaḥābī* cannot be found. In response to the second argument, it can be counter-argued that the difference between *ṣaḥābah mujtahidun* and *non-ṣaḥābah mujtahidun* is crystal clear in terms of their knowledge base and piety. It is rather inappropriate to put *ṣaḥābah* in the same category with *non-ṣaḥābah*. Thirdly, only the possibility of committing a mistake is insufficient to verify a real mistake. One may also counter this proposition by the fact that the chances of committing mistakes for *ṣaḥābah* do not prove other *mujtahidun* free of errors by any means. Besides, let us not miss the sight of the truth that the probability of committing mistakes in Sharī‘ah issues by *ṣaḥābah* is far less than the chances of incorrect judgements in later generations for various plausible reasons. Lastly, Al-Shawkani’s (1992) proposition of creating a separate source of Sharī‘ah by obeying *qawl al-ṣaḥābī* other than the Qur’ān and the Sunnah is also misleading. *Ṣaḥābah* are followed in *fiqhī* matters for not other than the reason that they themselves were guided by the Qur’ān and the Sunnah. Adhering to them is, in fact, the compliance to the main sources. It is merely an exaggeration to deem it as the deviation from the main sources. Had it been the other way around, the Prophet (pbuh) would not have said:

*So, (obligatory) upon you is my Sunnah, and the Sunnah of the Righteous Caliphs. Hold it firmly and bite onto it with the molar teeth; beware of newly invented matters in the religion, for indeed every innovation is misguidance (Al-Tirmidhi; Abu Daud).*

In the above *hadith*, the messenger of Allah extended the meaning of Sunnah to the practices of the rightly guided Caliphs too.

The second view is held by Al-Karkhi (a Hanafi jurist), Qazi Abu Zaid and some other Hanafi jurist. They view that it is a binding proof only in the matters which cannot be acquired by analogical deduction (*qiyās*) (Bukhari, 1997; Abu Zahrah, 1958). It means that if the opinion of a *ṣaḥābī* is related to a non-*ijtihādi* matter or to the issue which cannot be achievable by *qiyās* then it must be based on a higher source of rulings, i.e. the Qur’ān, the Sunnah or *ijmā’*. Otherwise, the *ṣaḥābah* would not express their opinion in this regard.

Kamali (2007) counts Al-Karkhi among the advocates of the first view, may be relying on Zuhayr (n.d.); however, Zuhayr (n.d.) did not mention his source or reference in his book. On the contrary, Bukhari (1997) counted Al-Karkhi in the proponents of this second view.

Furthermore, Abu Zahrah (1958) also confirmed that this view is held by Al-Karkhi. So, the later opinion is more reliable according to the authors.

The third view, which is similar to the second view to some extent, holds that *qawl al-ṣaḥābī* is a binding proof only when it conflicts with the *qiyās*. The explanation of this view is that if the opinion of a *ṣaḥābī* contradicts the *qiyās* in a specific matter then it implies the weakness of *qiyās* in solving that matter; hence, the *ṣaḥābī* must have followed the stronger source in his/her verdict. In the words of Al- Ghazali:

*The preferred opinion (al-qawl al-mukhtar) is that whatever from their opinions (madhhab of ṣaḥābah) conflicts analogy is binding because we do not assume that they give ruling on their own. Thus, we know that they based their opinions on a textual proof (nass). If it agrees with analogy then it is not (binding) (Al-Ghazali, 1979).*

These views do not really fall under the purview of our topic, because if the *fatwā* of a *ṣaḥābī* is found in non-*ijtihādī* matters, based on the main sources, then it is considered as indirect narration (Al-Shawkani, 1992). It will be assumed that the *ṣaḥābī* did not refer the narration directly to the Prophet (pbuh) because of his/her cautious attitude or for any other reason, and preferred to express it in his/her own words. There is no difference of opinions among scholars about this situation; majority of the jurists consider it a form of narration (*khabar* or *Sunnah*), and prefer it over *qiyās*.

Al-Shawkani (1992) claims that this opinion is depicted in the practice of Imam Abu Hanifah and Imam Shafi. Kamali (2007) also assumes that this third opinion is held by Imam Abu Hanifah, and for this statement, he might have relied on Zuhayr (n.d.). However, the association of this view with Imam Abu Hanifah is unqualified and demands for scrutiny. There are many reasons to hold the opinion otherwise. Firstly, Zuhayr (n.d.) specifies some scholars' names advocating other views but does not mention any specific name under this view, besides the fact that Imam Abu Hanifah's name must have been provided, had he supported this view. Secondly, even Al-Shawkani (1992) did not name Imam Abu Hanifah for holding this view, but only named Ibn Burhan for holding this view. And above all, Abu Zahrah (1958) strongly rejects the attribution of this notion to Imam Abu Hanifah. He opines that this view is said to be supported by Imam Abu Hanifah because some jurists derived this opinion from Imam Abu Hanifah different rulings and practices. However, many direct narrations of Imam Abu Hanifah were found which clearly state otherwise. Imam Abu Hanifah is reported to have said:



*When I find nothing in the book of Allah and the Sunnah of the Prophet, I resort to the opinions of ṣaḥābah. I may follow the ruling (from those opinion) which appeals to me and abandon which does not, but I do not abandon their views altogether and do not give preference to others (non-ṣaḥābah) over them (Al-Saimari, 1985; Abu Zahrah, 1958).*

Abu Zahrah (1958), having furnished many direct narrations of Imam Abu Hanifah, concludes:

*The truth about Abu Hanifah is what we have narrated from his sayings, and not what someone else has (indirectly) derived (by examining his rulings). The view, accepting the legality of qawl al-ṣaḥābī only in the issues where it is a narration (of the Prophet) and rejecting it in ijtihādī issues, is the view held by Al-Karkhi, not held by Abu Hanifah.*

The fourth view is held by Imam Shafi. Imam Shafi's statements are somewhat ambiguous in this regard. He is also reported to have said that *qiyās* is preferred which is aligned with *qawl al-ṣaḥābī* over the *qiyās* that does not have *qawl al-ṣaḥābī* supporting it. In this case, *qawl al-ṣaḥābī* is made a supporting evidence for preferring a *qiyās*. On the contrary, Qazi Husain, Al-Shashi, Al-Qattan and Al-Mazni have reported differently about Imam Shafi saying that the latest statement of Imam Shafi is that if *qawl al-ṣaḥābī* is backed by the *qiyās* then it is a binding proof, otherwise it is non-binding. According to this statement, *qawl al-ṣaḥābī* will become an independent source if it is advocated by the *qiyās*; the *qiyās* will have a secondary status in this situation (Al-Shawkani, 1992; Kamali, 2007).

Some jurists support yet another view which concludes that the *fatāwā* of four Caliphs are binding proofs; and some restrict them to the first two Caliphs only. Another group of scholars considers only six famous *mujtahidun ṣaḥābah* for that matter (Al-Shatibi, n.d.). All these views are based on various *ahadith* which praise specific companions in a particular way. In response to these opinions, we opine that although the *ahadith*, which are the basis of these views, definitely praise those companions but they do not confine the qualifications of conducting *ijtihād* to those individuals. There are many other companions who attained a complete understanding of the sciences of *fiqh* and qualify as *muftiyyun*. There is no reason to exclude them from this category.

The sixth view is that the *fatwā* of a *ṣaḥābī* is considered as absolute binding evidence in *ijtihādī* matters, and is preferred over *qiyās*; unless the *qiyās* is based on higher sources of Shari'ah. This view is supported by Imam Malik, Imam Abu Hanifah (according to his direct narrations), Al-

Razi, Imam Ahmad (according to one of his two statements), Imām Shafi (according to one of his statements). Most of the Māliki and Hanafi scholars, including Al-Shaibani and Abu Yusuf, hold this opinion (Bukhari, 1997; Zuhayr, n.d.; Abu Zahrah, 1958). We deem this view as the opinion of the majority of scholars. Most of the jurists hold this view as their *madhhab* which is apparent from the following discussions.

Imam Malik practically considers *qawl al-ṣaḥābī* as good as the Sunnah. This can be observed from the fact that he heavily relied on *madhhab* of *ṣaḥābah* in his book Al-Muatta. He reported approximately 1700 narrations, half of which are the opinions of *ṣaḥābah*. Even Imam Ahmad is not so different from Imam Malik in this matter (Abu Zahrah, 1958; Kamali, 2007). He counts *qawl al-ṣaḥābī* as the second source of rulings in Hanbali School of Islāmic thought (Ibn Qayyim, 1968). The view of Imam Abu Hanifah has been indicated above with reference from Al-Saimari, 1985; Abu Zahrah, 1958.

Abu Yusuf narrates from Imam Abu Hanifah:

*When a hadith from the Prophet is narrated by reliable narrators (muhaddithun), we take it as a proof. When something is narrated from the companions of the Prophet, we do not exceed from their opinions (Al-Saimari, 1985; Abu Zahrah, 1958).*

Imam Shafi is quoted by Abu Zahrah (1958) as:

*I follow the rulings of ṣaḥābah when I find nothing in the Qur'ān, Sunnah or ijmā', or anything which carries through the implications of these sources.*

Some proofs, supporting the majority's view, are as follows:

It is stated in the Qur'ān, those who follow *ṣaḥābah* will receive the pleasure of Allah. Moreover, Allah provides evidence of the knowledge of the companions in the Qur'ān: *Those who are blessed with knowledge see that what is sent to you from your Lord is the truth, and it guides (people) to the path of the All-Mighty, the Ever-Praised (Qur'ān, Sūrah Saba 34:6).*

Their status is also specified by many a *ahadith*, such as:

*The best people are those living in my generation, and then those who will follow them, and then those who will follow the latter... (Bukhari, 2001).*

From the aspect of *qiyās*, it is said that the companions were the closest to the Prophet among all people; they were the direct witnesses of the revelations and the contexts in which they were revealed. It is admitted by all the jurists that the companions acted upon the Qur'ān and the Sunnah in the most zealous ways. As a result, their opinions were usually

based on the key sources of Sharī‘ah. It is also assumed that the *qawl al-ṣaḥābī* is not necessarily based on mere *ijtihād* of a *ṣaḥābī*; rather it might have a footing on the Qur’ān and/or the Sunnah, but the later scholars could not find the relation. It might be based on the Sunnah, where the *ṣaḥābī* directly heard it from the Prophet or from another *ṣaḥābī* who heard directly from the Prophet, but it was not narrated by the later narrators (*muhaddithun*). The *ṣaḥābah* were the most familiar with the dialect, language, conditions, environment and contexts in which the Sunnah was developed. Being directly addressed by the Prophet, their understanding of the Sunnah is unquestionable (Abu Zahrah, 1958).

The bindingness of the *qawl al-ṣaḥābī* is actually derived from the collective understanding of the Qur’ān and *ahadith* on this topic. It should be noticed that giving it priority over the *qiyās* does not mean that the *fatwā* of a *ṣaḥābī* is a separate and superior source in all situations. It only implies that it is preferably chosen over mere *qiyās*. But, in some cases, the *qiyās* might be based on stronger injunctions of the Qur’ān or Sunnah then it will overrule the *qawl al-ṣaḥābī*. Therefore, *qawl al-ṣaḥābī* is only a preferred source over the plain *qiyās*.

Lastly, it should be noted that the binding nature of this source is not the same as of the Qur’ān, Sunnah, *ijmā‘*, or even *qiyās* in some special cases; it is weaker than these sources. As many controversies revolve around the status of *qawl al-ṣaḥābī* in *fiqh*, contemporary jurists do not treat it in practice as a standalone single-proof for any verdict. They rather try to combine other sources with it before they pronounce any judgement.

#### **4. Importance of *Qawl al-Ṣaḥābī* in *Fiqh al-Mu‘āmalāt***

Despite the controversies hovering over the issue of legal status of *fatāwā* of *ṣaḥābah*, most of the jurists comfortably use *qawl al-ṣaḥābī* in their literature to support *qiyās* and *ijtihād* they put forward. Al-Shatibi mentions that many *tabī‘un*, *taba‘ tabī‘un*, and *mujtahidun* normally try to avoid contradiction with *qawl al-ṣaḥābī* and, most of the times, tend to agree with them. Whenever they adopt a ruling in the *fiqh*, they attempt to support it with *qawl al-ṣaḥābī*, if available. Of course, whether it is binding or not depends on the scholars’ position in this regard. However, it has been recognised that the knowledge of the companions, their understanding of the Sharī‘ah and their determination to follow the Qur’ān and the Sunnah in each and every aspect of life is a remarkable archetype model for others. Similarly, *fiqh al-mu‘āmalāt*, being part of general *fiqh*, is not an exceptional case. In fact, through *fiqh al-mu‘āmalāt*, *qawl al-ṣaḥābī* also plays a crucial role in modern Islāmic finance. Islāmic scholars frequently discuss *qawl al-ṣaḥābī* in this field of study too; and

on top of that, the traditions and practices of *ṣaḥābah* have also been accepted in many cases as the basis of Islāmic financial contracts and transactions.

## 5. Importance of *Qawl al-Ṣaḥābī* in Islāmic Finance

The importance of *qawl al-ṣaḥābī* in Islāmic Finance can be observed through many examples found in *fiqh al-mu'āmalāt*.

In theoretical perspective we see that anxiety shown by Caliph Umar (ra) that the Prophet (pbuh) passed away before explaining the details of prohibition of *riba* has been a major reference point in defining *riba* in modern day perspective. Many scholars had been referring to this to prove that modern interest might not be *riba* as prohibited in the Sharī'ah. The majority, however, took it positively and emphasised on instruction of Caliph Umar that we must avoid *riba* as also the *ribah* (the doubtful). It is in line with advice of the Prophet (pbuh) to also avoid the doubtful acts or transactions as recommended by the Prophet (pbuh) in the following words: (دع ما يريبك إلى ما لا يريبك) as reported by Muhammad Amin Al-Shanqiti, *Adhwa-al-Bayani fi Idhahil Qur'ān-bil Qur'ān*, Al-Matbaa' Al-Ahliyyah, Riyadh; Vo1.1, p.320. A lot of explanations have been given in this regard. The ambiguity expressed by Caliph Umar related to some types of *riba al-buyu'* only that is involved in exchange of commodities and that has no similarity or concern with the simple act of lending money or the present institutionalised form of interest. The same book of *hadith* that reports the doubt of Caliph Umar reports from him that "Certain forms of *riba* are quite clear and explicit and we have no doubt about them". Dr. Ziaul Haque quotes from Kanzal-Ummal, "Umar ibn al Khattab said in an address that the people were confused as to the different forms of *riba*. He told them that some of its forms which were common in the agricultural districts of Egypt, were well known: advancing of loans in the form of young animals to be repaid after some time in the shape of older animals or sale of green crops/raw fruits for grains or ripe fruits; or the sale of gold on credit to be repaid in silver. This reveals that Umar (ra) had clarity of mind even in respect of many barter transactions. After territorial conquests of Islām the regions having more developed agriculture like Egypt, Syria, Persia and Mesopotamia had deep-rooted usurious and speculative agricultural practices which extended from loans/credits to sales/exchange of many types<sup>2</sup>.

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<sup>2</sup>Ziaul Haque, *Islam and Feudalism: The Economics of Riba, Interest and Profit*; Lahore, 1985, p.30.

Similarly, the advices of caliph Umar with regard to treatment of concurred lands, *'ushr* (toll tax, treatment of the amount of loan given to his son by the Governor of Iraq as *mudārabah* capital, getting back the full amount of loan from the lady named Hindah, who had borrowed from the *bayt al-mal* for business in Iraq (cf. Ayub, 2007) approving the contract of the prison house at Makkah executed using *'urbūn* are some examples of the importance of the opinion/practice of the Companions in economics, business and finance. The emphasis lead by caliph Umar on repayment of debt and the sense of accountability of the rulers/economic managers is evident from an incident as reported by Abu Ubaid in his *Kitab al-Amwal*: Umar (ra) wanted to borrow 400 Dirhams from Abdul Rahman Ibn `Auf; he replied: You have *bayt al-mal*, why don't you borrow from *bayt al-mal*; Umar replied: If I borrow from *bayt al-mal*, in case of my death, you and other Muslims would say to waive the debt and in that case my virtues would be reduced; while I know that you love *māl* and will get back your money from my inheritance (*Kitab al-Amwal, hadith 664*). Likewise, many instances can be quoted from other Companions like caliph Abu Bakr, Abdul Rahman Ibn Awf, Zubair Ibn Al-Awam and others.

In order to elaborate further, some examples are briefly discussed below.

*Abdullah Ibn Abbas (ra) narrates that the Messenger of Allah (pbuh) said: if you have bought food then do not sell it until you take possession of it. Ibn `Abbas said: I think other items are also like food in sale (Al-Tabarani, 1983).*

The above *hadith* means that the sale of food items is void if the seller does not possess the items in his/her ownership. Ibn Abbas holds that the sale of all products, before they are owned or seized by the seller, is invalid. According to him, the condition of the ownership prior to the sale should not be confined to food items only; rather this restriction should be extended to the non-food items as well. Imam Shafi (1973), in his well-known book "Al-Umm", favours this view, and comments that the *fatwā* of Ibn `Abbas is aligned with the *qiyās*, so it must be followed. Hanafis and Ṣanbal<sup>1</sup>s also agree with this ruling with some details (Ibn Qudamah, 1984; Al-Kasani, 1982).<sup>3</sup>

The application of this ruling can be observed in most of the sale contracts carried out in Islāmic finance industry. A real transfer of

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<sup>3</sup>One may be mindful of the fact that this is not, however, the only underlying reason for this particular ruling. There are other a hadith too which support this ruling. This example is only presented to demonstrate that the *qawl al-ṣaḥābī* is used as one of the basis of the ruling in *fiqh al-mu'amalat*.

ownership is a condition for the validity of any sale based contract. The issue of ownership of goods can be seen under the discussion of the Shari'ah Advisory Council of Bank Negara Malaysia under the contracts of *ijārah*, *al-ijarah thumma al-bai'* (AITAB), *bai' al-'inah*, etc. (Bank Negara Malaysia, 2010). AAOIFI (2010) also mentions this in the definition of *murāba fah*.

Another example of using *qawl al-ṣaḥābī* can be highlighted with regard to sale of *'inah* (بيع العينة). By definition, *bai' al-'inah* is a sale contract which involves sale and buy back transactions of an asset by the seller (Bank Negara Malaysia, 2010). The sale of *'inah* is: when the seller buys back what he has sold to the buyer on the price less than the first price (at which the seller has sold) before the first price is paid. In Malaysia, it is also called *bai' al-'ajal* although in Islāmic law of contract *bai' al-'ajal* or *mu'ajjal* refers to any credit sale. In practice, a bank sells an item on credit to its client at an agreed price which is payable to the bank over a period in instalments, and concurrently the bank buys back the same item at the spot price less than the first deferred price. The outcome of *bai' al-'inah* is that the client receives some cash as a result of the second phase of sale, while he/she undertakes to pay instalments to the bank as a result of the first sale contract. Hanafis, Hanbalis and Malikis do not allow such type of sale; while, Imam Shafi permits it. Though, the authors' agree with the majority of the jurists in case of such sale; however, for the sake of furnishing the fact that how much the opinions of *ṣaḥābah* are important for different jurists and in the discipline of *fiqh al-mu'āmalāt*, they elaborate Imam Shafi's opinion below.

In this regard a *hadith* of Ayishah (ra) is presented, which informs us that once a woman visited Ayishah (ra) and told her that she had a slave girl. She sold that girl to Zaid B. Arqam (ra) for 800 Dirhams on credit and bought her back for 600 dirhams on spot price from him. Ayishah (ra) replied her: what a bad thing you bought and what a bad thing he bought; inform Zaid B. Arqam that he has spoiled his *jihad* with the Messenger of Allah (pbuh) unless he repents. The woman said to Ayishah: what if I take only my capital and return back the extra money to him. She said: {so whoever has received an admonition from his Lord and desists may have what is past (*Qur'ān*, Surah Al-Baqarah, 275)} (*al-Zelai*, 1995).

Some of the contemporary Shari'ah scholars from Malaysia used the above *hadith* as a proof for cash financing, Islāmic credit card, etc. by way of 'buy-back' arrangement. Those contemporary scholars state that Imam Shafi, although does not recognise this sale with the name of *'inah*, he declares the structure of such sale as valid. Imam Shafi opines that both



the contracts are valid as long as they are treated separately (Rosly and Sanusi, 2001). Zahiris also agree with Imam Shafi in this regard (Cf. Securities Commission, 2006). Imam Shafi (1973) in his book, "Al-Umm", states that the *hadith* of Ayishah (ra) is weak. Moreover, even if this *hadith* is referred to, the opinions of the companions are contravened over this issue. The practice of Zaid Bin Arqam (ra) supports the validity of this type of sale; while Ayishah (ra) declares it as impermissible and warns Zaid (ra) of severe outcome of this practice. In this situation, Imam Shafi decides to follow the opinion which is in line with his *qiyās* and hence deems this type of sale as permissible (Al- Shafi, 1973). It should be, however, noticed that Rosly and Sanusi (2001) concluded in a study that even Imam Shafi does not allow *bai' al-ʿinah* and the difference between Imam Shafi and other scholars lies only in the method of inference, not in the verdict. They conclude that:

*The Shafi may thus permit the contract because its legal preconditions are fulfilled, but forbids the transacting act of the parties when it conflicts with Sharīʿah principles (Rosly and Sanusi, 2001).*

However, Bank Negara Malaysia (2010) and Securities Commission (2006), based on the opinion of Imam Shafi, allowed *bai' al-ʿinah* with some conditions. The application of this sale may be seen in a variety of situations in Malaysian Islāmic finance industry. For instance, this concept may be observed in many buy-back contracts, which serve the purpose of liquidity management. It was applied in Islāmic interbank money market in Malaysia (Bank Negara Malaysia, 2010) as well as in Malaysian Islāmic capital market (Securities Commission, 2006). These transactions were mostly designed to solve the short term liquidity issues.

But quite recently the SC Malaysia has tightened the rules for *ʿinah* practice. New rules published by The SC in May, 2014 stress that the two legs of the transaction must be executed and completed separately, and that ownership of the asset must actually be transferred. It is being considered as fulfilling the conditions of *ʿinah* as required by the Shāfiʿī School of thought in reality. According to well-known scholar Mohammad Akram Laldin, executive director at Malaysia's International Shariah Research Academy (ISRA): "The main issue is the two legs of the contract must be totally separated, and it has to be evidenced in all the documents."<sup>4</sup> However, as Shamsiah Mohamad, a member of the Sharīʿah Advisory Council of BNM views: "Most of the Islāmic financial institutions have a problem complying with the new ruling. The rules are

<sup>4</sup>ZAWYA weekly Briefing 25 5 14 - [http://www.zawya.com/story/pdf/pdf\\_250514110256/](http://www.zawya.com/story/pdf/pdf_250514110256/)

too tight to fulfill them they have a problem... Indirectly, when Islāmic banks do not do it, over time it will phase out.”

Notwithstanding the difference of opinion, it may be appropriate to say that the *fatwá* of a *ṣaḥābī* has been used by the scholars in developing Islāmic finance products on the basis of *bai‘ al-‘īnah*. We feel that this source of *fiqh* has not been utilised yet to the extent of its true potential. We believe that if this source is carefully examined and analysed from the Islāmic finance perspectives, it will offer a great deal of novel ideas, which can be implemented in the field. On one hand, it will ensure more robust Sharī‘ah compliance and reliability in Islāmic finance industry; and on the other, it will bridge the gap between the theory and practices of Islāmic finance. It will offer a wide array of Islāmic solutions for the financial issues, which may include new financial products, risk management tools, instruments for liquidity and more.

## 6. Summary and Concluding Remarks

There are two famous opinions about the *fatwá* of *ṣaḥābī* in *uṣūl al-fiqh*, while other views are only supported by a small number of jurists. The first of the two opinions does not consider *qawl al-ṣaḥābī* as a binding proof at all. On the contrary, the second opinion, which is held by majority of the scholars including four famous Imam s, confirms it as an absolute authentic source, and binding proof under special conditions. However, it should be noted that given the controversies over this issue, the jurists of the latter group take great care in the application of *qawl al-ṣaḥābī* in practice. In the words of Kamali (2007):

*Nonetheless, the four leading Imam s consider the fatwá of a Companion to be a persuasive source of guidance in that it carries a measure of authority which merits careful consideration, and commands priority over the ijtihād of other mujtahid<sup>Ln</sup>.*

Due to the significance of *qawl al-ṣaḥābī* as a source of *fiqhī* rulings, the field of Islāmic finance can benefit from it at a greater level. Therefore, *qawl al-ṣaḥābī* together with the other sources of *fiqh* can extensively contribute in bringing the innovations and developments in Islāmic finance. This will not only help the industry to foster at a higher pace, but also assist in truly reflecting the complete Sharī‘ah compliance of the Islāmic financial system.

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